



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF E-N-D-C-

DATE: MAY 16, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

APPLICATION: FORM I-212, APPLICATION FOR PERMISSION TO REAPPLY FOR
ADMISSION INTO THE UNITED STATES AFTER DEPORTATION OR
REMOVAL

The Applicant, a native and citizen of Mexico, was found inadmissible for entering the United States without being admitted after having been ordered removed from the United States and seeks permission to reapply for admission into the United States. *See* Immigration and Nationality Act (the Act) section 212(a)(9)(C)(ii), 8 U.S.C. § 1182(a)(9)(C)(ii). For those inadmissible on this ground who seek admission after residing abroad for 10 years following their last departure, U.S. Citizenship and Immigration Services (USCIS) may remove the inadmissibility bar by granting permission to reapply in the exercise of discretion.

The Field Officer Director, San Bernardino, California, denied the application. The Director concluded the Applicant did not meet the requirements for permission to reapply for admission. The Applicant appealed this decision, and we also found her statutorily ineligible to apply for permission to reapply for admission. The Applicant submitted a motion to reconsider, and we concluded in a decision dated September 10, 2015, that the Applicant had not established our decision was based on an incorrect application of law or policy, and denied the motion, accordingly.

The matter is again before us on motion to reconsider. In the motion, the Applicant claims her apprehension near a port of entry does not meet the requirements of a removal order under section 235(b)(1) of the Act.

Upon review, we will deny the motion.

I. LAW

The Applicant is seeking permission to reapply for admission to the United States and has been found inadmissible for entering the United States without being admitted after having been ordered removed from the United States. Section 212(a)(9)(C) of the Act, 8 U.S.C. § 1182(a)(9)(C), provides, in pertinent part:

Aliens Unlawfully Present After Previous Immigration Violations.-

(i) In General

Any alien who-

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law,

and who enters or attempts to reenter the United States without being admitted is inadmissible.

Individuals found inadmissible under section 212(a)(9)(C) of the Act may seek permission to reapply for admission under section 212(a)(9)(C)(ii). Section 212(a)(9)(C)(ii) of the Act provides, in pertinent part:

Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Secretary of Homeland Security has consented to the alien's reapplying for admission.

II. ANALYSIS

The issue presented on motion is whether the Applicant is inadmissible for attempting to reenter the United States without inspection after removal and, therefore, statutorily ineligible for permission to reapply for admission. The Applicant contends that her expedited removal order was legally insufficient, and thus her reentry without inspection after being removed did not render her inadmissible under section 212(a)(9)(C) of the Act. We conclude that the Applicant left the United States pursuant to an order of expedited removal and she is thus inadmissible under section 212(a)(9)(C)(i)(II) of the Act, and, as we previously determined, the Applicant is statutorily barred from receiving permission to reapply because she is in the United States and did not remain outside the United States for ten years after her last departure.

A. Inadmissibility

As stated above, the Applicant has been found inadmissible under section 212(a)(9)(C) of the Act for entering the United States without being admitted after having been ordered removed from the United States, specifically, for entering without inspection later the same day she was removed to Mexico. The record reflects that on January 30, 2005, after attempting to procure admission with a lawful permanent resident card belonging to another person, the Applicant was ordered removed under section 235(b)(1) of the Act and, pursuant to that order, was actually removed to Mexico. Later the same day as her removal, she reentered the country without inspection.

The Applicant asserts that her removal order did not meet legal requirements because she was not advised of her rights and that, based on the Ninth Circuit's decision in *Rodriguez-Echeverria v. Mukasey*, 534 F. 3d 1047 (9th Cir. 2008), her expedited removal order thus legally insufficient. Unlike the Applicant in the present case, the respondent in *Rodriguez-Echeverria* was ordered removed by an immigration judge after service with a Notice to Appear (NTA) and appearance before the court in formal proceedings. *Id.* According to the regulations, "[e]xcept in the case of an alien subject to the expedited removal provisions of section 235(b)(1)(A) of the Act, an alien arrested without warrant and placed in formal proceedings under section 238 or 240 of the Act will be advised of the reasons for his or her arrest and the right to be represented at no expense to the Government." 8 C.F.R. § 287.3(c) (emphasis added). Both the Ninth Circuit and the Board of Immigration Appeals have determined that immigration officers need only advise aliens of their rights after an alien is placed into formal proceedings, pursuant to the filing of an NTA. *Matter of E-R-M-F- & A-S-M-*, 25 I&N Dec. 580 (BIA 2011); *Samayoa-Martinez v. Holder*, 558 F.3d 897 (9th Cir. 2009). As there was no NTA filed in relation to this Applicant and she was not placed into formal immigration proceedings, her expedited removal order was properly issued and conforms with the regulations.

The Applicant was removed from the United States under a removal order on January 30, 2005 and returned to the United States on or about the same date without being admitted. The Applicant, therefore, is inadmissible pursuant to section 212(a)(9)(C)(i)(II) of the Act.

B. Permission to Reapply

A foreign national who is inadmissible under section 212(a)(9)(C) of the Act may not apply for consent to reapply for admission unless the alien has been outside the United States for more than 10 years since the date of the alien's last departure from the United States. *See Matter of Torres-Garcia*, 23 I&N Dec. 866 (BIA 2006); *Matter of Briones*, 24 I&N Dec. 355 (BIA 2007); and *Matter of Diaz and Lopez*, 25 I&N Dec. 188 (BIA 2010). Thus, to avoid inadmissibility under section 212(a)(9)(C) of the Act, it must be the case that the Applicant's last departure was at least ten years ago, the Applicant has remained outside the United States, and USCIS has consented to the Applicant's reapplying for admission.

The Applicant's last departure from the United States occurred on January 30, 2005, and she returned to the United States on January 30, 2005. As the Applicant currently resides in the United States, she has not remained outside the United States for 10 years since her last departure. She is statutorily ineligible to apply for permission to reapply for admission.

III. CONCLUSION

The Applicant has the burden of proof in seeking permission to reapply for admission. *See* section 291 of the Act, 8 U.S.C. § 1361. The Applicant has not met that burden. Accordingly, we deny the motion.

Matter of E-N-D-C-

ORDER: The motion to reconsider is denied.

Cite as *Matter of E-N-D-C-*, ID# 16264 (AAO May 16, 2016)